the DoDGARs are parts 22, 32, 33, and 34 (32 CFR parts 22, 32, 33, and 34).

[68 FR 47160, Aug. 7, 2003, as amended at 70 FR 49477, Aug. 23, 2005; 72 FR 34999, June 26, 2007]

Subpart B—Appropriate Use of Technology Investment Agreements

§37.200 What are my responsibilities as an agreements officer for ensuring the appropriate use of TIAs?

You must ensure that you use TIAs only in appropriate situations. To do so, you must conclude that the use of a TIA is justified based on:

(a) The nature of the project, as discussed in §37.205;

(b) The type of recipient, addressed in §37.210;

(c) The recipient's commitment and cost sharing, as described in §37.215;

(d) The degree of involvement of the Government program official, as discussed in §37.220; and

(e) Your judgment that the use of a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used. Your answers to the four questions in §37.225 should be the basis for your judgment.

§37.205 What judgments must I make about the nature of the project?

You must:

(a) Conclude that the principal purpose of the project is stimulation or support of research (*i.e.*, assistance), rather than acquiring goods or services for the benefit of the Government (*i.e.*, acquisition);

(b) Decide that the basic, applied, or advanced research project is relevant to the policy objective of civil-military integration (*see* appendix A of this part); and

(c) Ensure that, to the maximum extent practicable, any TIA that uses the authority of 10 U.S.C. 2371 (*see* appendix B of this part) does not support research that duplicates other research being conducted under existing programs carried out by the Department of Defense. This is a statutory requirement of 10 U.S.C. 2371.

(d) When your TIA is a type of assistance transaction other than a grant or cooperative agreement, satisfy the condition in 10 U.S.C. 2371 to judge that the use of a standard grant or cooperative agreement for the research project is not feasible or appropriate. As discussed in appendix B to this part:

(1) This situation arises if your TIA includes a patent provision that is less restrictive than is possible under the Bayh-Dole statute (because the patent provision is what distinguishes a TIA that is a cooperative agreement from a TIA that is an assistance transaction other than a grant or cooperative agreement).

(2) You satisfy the requirement to judge that a standard cooperative agreement is not feasible or appropriate when you judge that execution of the research project warrants a less restrictive patent provision than is possible under Bayh-Dole.

§37.210 To what types of recipients may I award a TIA?

(a) As a matter of DoD policy, you may award a TIA only when one or more for-profit firms are to be involved either in the:

(1) Performance of the research project; or

(2) The commercial application of the research results. In that case, you must determine that the nonprofit performer has at least a tentative agreement with specific for-profit partners who plan on being involved when there are results to transition. You should review the agreement between the nonprofit and for-profit partners, because the for-profit partners' involvement is the basis for using a TIA rather than another type of assistance instrument.

(b) Consistent with the goals of civil-military integration, TIAs are most appropriate when one or more commercial firms (as defined at §37.1250) are to be involved in the project.

(c) You are encouraged to make awards to consortia (a consortium may include one or more for-profit firms, as well as State or local government agencies, institutions of higher education, or other nonprofit organizations). The reasons are that:

(1) When multiple performers are participating as a consortium, they are more equal partners in the research performance than usually is the case